IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Crl.MC.No. 278 of 2007()

CC.124/2006 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONER:

P.J. JAMES, S/O.P.V.JOSE,
PROPRIETOR, ELSA AGENCIES & DISTRIBUTORS,
O.S.NO.44, IVTH FLOOR, G.C.D.A. SHOPPING COMPLEX,
MARINE DRIVE, ERNAKULAM.

BY ADV. SRI.P.SATHISAN

RESPONDENTS:

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1. P.J. JOSEPH, PALAKKARAN HOUSE,
GODOWN ROAD, EDAPPALLY.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 278 of 2007

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Dated this the 13th day of February, 2007

O R D E R

The grievance of the petitioner is that he has not been given an effective opportunity to argue for a discharge under Section 239 Cr.P.C. Cognizance has been taken of the offence allegedly committed by him, inter alia, under Sections 406 and 420 I.P.C. The petitioner claims that he wanted to argue for discharge. When the case was initially pending before the J.F.C.M.-I, Ernakulam he had wanted to argue for a discharge and according to the counsel for the petitioner the learned Magistrate had in fact heard him on the question of framing the charges. But no decision was taken. The case was later transferred to the Court of J.F.C.M.-I, Kochi. There, according to the petitioner, charges have been framed without giving him an opportunity to be heard in detail. The petitioner had wanted to advance the arguments. He had in fact filed an application to claim discharge under Section 239 Cr.P.C. but an effective opportunity for being heard was not given.

2. Report of the learned Magistrate was called for. The learned Magistrate submits that the petitioner had not pressed for hearing on charge/discharge. The learned Magistrate reports that the petition claiming discharge is available in the file of the Court. But the learned Magistrate contends that there is nothing to show that it was properly filed before Court.

3. Be that as it may, I am not entering into the controversy as to how that petition found its way to the file of the Court. I am satisfied that the petitioner deserves to be granted a further opportunity to argue for discharge. The order framing charges has got to be set aside and the learned Magistrate must be directed to give opportunity to the petitioner to argue for a discharge under Section 239 Cr.P.C.

4. This Crl.M.C. is accordingly allowed. The order framing charges is set aside. The learned Magistrate is directed to consider the petitioner's claim for discharge under Section 239/240 Cr.P.C. and take appropriate decision afresh in the matter.

(R. BASANT)
Judge

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